

June 21, 2016

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Protecting the Privacy of Customers of Broadband and Other  
Telecommunications Services, WC Docket No. 16-106

Dear Chairman Wheeler:

I am writing in support of strong FCC rules to establish clear consumer privacy standards for broadband internet access service (BIAS). I ask that the Commission move quickly to finalize its rules for this sector.

The absence of clear and strong rules for BIAS providers has resulted in a host of dubious practices that endanger consumers' privacy, and I am particularly concerned about new business models that single out low-income consumers for differential treatment with regard to their privacy and the use of their financial and other personal data.

Internet access is an essential service. According to Pew, a "substantial majority of Americans feel that people without home broadband service are at a disadvantage when it comes to keeping up with news or information, getting health information, learning new things, accessing government services or engaging in a job search."<sup>1</sup>

But to access the internet, consumers have no choice but to disclose personal information to BIAS providers, including their name, address, billing information such as a bank account or credit card number, Social Security number, and other information. In the course of providing service, BIAS providers also collect vast troves of customer data, including service and payment history, search terms entered, websites visited and duration of those visits, location information, and enormous amounts of other data.<sup>2</sup>

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<sup>1</sup> Pew Research Center, *Home Broadband 2015*, Dec. 21, 2015, at 11, available at <http://www.pewinternet.org/files/2015/12/Broadband-adoption-full.pdf>.

<sup>2</sup> See, e.g., Comments of New America's Open Technology Institute, *Protecting the Privacy of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, filed May 27, 2016, at 15-16, available at <http://apps.fcc.gov/ecfs/document/view?id=60002081381>.

One commenter in the Commission's proceeding has pointed out that BIAS providers can "use information collected for one reason (in this case, billing) ... to discriminate against consumers."<sup>3</sup> The CEO of Cable One recently bragged that his company uses subscriber information to run credit checks on its customers, and then diverts those with low FICO scores into lower-quality customer service. He bragged of a "very rigorous [] credit scoring process' ... [to ensure that] the cable company's technicians aren't going to 'spend 15 minutes setting up an iPhone app' for a customer who has a low FICO score."<sup>4</sup> Although the Cable One executive appeared to have been talking about the company's video customers, the example makes it clear that BIAS providers could be using private consumer data (often without the knowledge of the consumer) in ways that harm low-income consumers in particular. The FCC is right to propose rules that would prohibit BIAS providers from using customer information for purposes unrelated to service without informing their customers or obtaining their consent.

BIAS providers are also engaging in practices that require consumers to pay extra fees so that their provider will not collect their data or sell it to third parties. AT&T's Gigapower Internet service requires consumers to pay as much as \$66 in additional monthly costs for service that maintains their privacy.<sup>5</sup> The FCC is right to be concerned about a service that requires consumers to pay hundreds of dollars extra each year so that their BIAS provider does not collect and sell information on the websites they visit, the ads they see, and the terms they enter into search engines.<sup>6</sup>

These practices are wrong. Privacy is not a luxury good reserved only for the wealthy. And we should not allow BIAS providers to extort consumers who want to control how their personal information is used and shared when they use essential communications services. The Commission has already proposed prohibiting BIAS providers from making service offers "contingent on a customer surrendering his or her privacy rights."<sup>7</sup> The Commission should scrutinize these practices, and use its authority to ban unreasonable practices that coerce low-income consumers into giving up their privacy in return for access to basic internet services.

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<sup>3</sup> Comments of Public Knowledge, the Benton Foundation, Consumer Action, Consumer Federation of America, and National Consumers League, *Protecting the Privacy of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, filed May 27, 2016, at 15, available at <http://apps.fcc.gov/ecfs/document/view?id=60002080037>.

<sup>4</sup> Daniel Frankel, *Cable One using FICO scores to qualify video customers, Might says*, Fierce Cable, May 23, 2016, available at <http://www.fiercecable.com/story/cable-one-using-fico-scores-qualify-video-customers-might-says/2016-05-23>.


<sup>5</sup> Stacey Higginbotham, *Don't let AT&T mislead you about its \$29 "privacy fee,"* Gigaom, Feb. 19, 2016, available at <https://gigaom.com/2015/02/19/dont-let-att-mislead-you-about-its-29-privacy-fee/>.

<sup>6</sup> Notice of Proposed Rulemaking, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, FCC 16-39, at ¶ 259 (released April 1, 2016).

<sup>7</sup> *Id.* at ¶ 258.

Low-income consumers already have low rates of broadband adoption, and as your work continues in this proceeding, the Commission should pay special attention to practices that would disadvantage low-income consumers in particular. Just as the Commission has protected consumers' privacy when it comes to traditional telephone service, so too should the Commission protect consumers' privacy when it comes to broadband. It has already been more than one year since the Commission indicated that it would conduct this current rulemaking proceeding to adopt customer privacy rules for broadband.<sup>8</sup> As the examples in this letter demonstrate, BIAS providers are continuing to develop new invasive and abusive practices using consumers' private financial and other personal information. I therefore ask the Commission to adopt strong consumer privacy rules without delay.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>8</sup> Order, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24 at ¶ 462 (released March 12, 2015).





OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

August 23, 2016

The Honorable Elizabeth Warren  
United States Senate  
317 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your letter supporting the Commission's efforts to adopt rules protecting the privacy of broadband customers' personal information.

As you know, I share your commitment to consumer privacy as well as your concern about the use and sharing of customer data by broadband internet access service (BIAS) providers, especially in light of the position they occupy as gatekeepers between their customers and the internet. I also share your concerns about lower broadband adoption rates among lower income consumers, an issue we work to address every day at the FCC.

As you highlight in your letter, in the course of providing service, BIAS providers can collect vast amounts of customer data. Even when data is encrypted, a broadband provider can still see the websites that a customer visits, how often the sites are visited, and the amount of time spent on each website. With this information, BIAS providers can piece together enormous amounts of information about an individual—including private information such as a chronic medical condition or financial problems. And consumers, once signed up for broadband service, cannot simply avoid this network in the way they can instantaneously (and freely) switch search engines, websites, or applications.

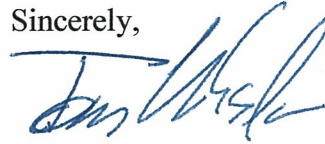
I agree that privacy should not be a luxury good reserved only for the wealthy. In the Commission's broadband privacy proposal, we have sought comment on business practices that offer customers financial inducements, such as discounted service rates, for their consent to use and share their information. The record developed in this proceeding reflects widely disparate views on this issue. Some commenters argue that these business models unfairly disadvantage low-income or vulnerable populations. Other commenters maintain that consumers, including low-income consumers, stand to benefit from the use and sharing of their information and should be given the opportunity to make that choice. As the Commission continues to examine the substantial record in the proceeding, I can assure you that we will carefully consider the risks and benefits of adopting rules regarding such practices with particular attention to the effect of these business models on low-income consumers.

As you recognize in your letter, the Commission has a special responsibility to safeguard consumers' privacy in their use of communications networks. I am proud of the Commission's

long history of steadfastly protecting consumers against misuse of their information by requiring communications networks to obtain their customers' approval before repurposing or reselling customer information. Protecting the privacy of Americans makes just as much sense in the world of broadband networks as it has for the past 20 years in the world of telephone networks, especially following the Commission's reclassification of BIAS in the *2015 Open Internet Order*.

I appreciate your interest in this matter. Your letter raises important issues, and I have asked that it be included in the record of this rulemaking proceeding so that it can be considered as part of the public record that informs the Commission's next steps in the broadband privacy rulemaking. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized, flowing script.

Tom Wheeler